

# EXHIBIT D

### 11.13 Subrogation and Reimbursement.

(a) Plan's Right to Subrogation. To the extent of any payments the Plan makes or may be obliged to make for a claim ("Claim"), the Plan shall be subrogated to all rights of recovery of a Participant, his or her parent(s) and dependent(s) or a representative or guardian or trustee of the Participant, parent(s) or dependent(s) (collectively referred to as "Claimant") relating to the incident. The subrogation right applies to any recovery, whether by suit, settlement or otherwise, whether partial or full recovery and regardless whether Claimant is made whole, from any source liable for making a payment relating to the injury, illness or condition to which the Claim relates ("Source"). A Source includes, but is not limited to, a responsible party and/or a responsible party's insurer (or self-funded protection), no fault protection, personal injury protection, financial responsibility, uninsured or underinsured insurance coverages, as well as medical reimbursement coverage purchased by the Claimant or any responsible party.

(b) Right of Reimbursement. The Claimant shall first reimburse the Plan for all payments the Plan made or may be obliged to make for the Claim from any recovery from any Source, whether by suit, settlement or otherwise, including partial or full recoveries and regardless whether the Claimant is made whole. Once the Plan makes or is obligated to make payments on behalf of the Claimant, the Plan is granted, and the Claimant consents to, an equitable lien by agreement or a constructive trust on the proceeds of any payment, settlement or judgment received by the Claimant from any Source.

(c) Enforcement of Rights. The Plan has the right to recover amounts representing the Plan's subrogation and reimbursement interests under this section 11.13 through any appropriate legal or equitable remedy, including but not limited to the initiation of a collection action under ERISA or applicable federal or state law, the imposition of a constructive trust or the filing of a claim for equitable lien by agreement against any Claimant for recovery from any reimbursement interests, and rights to legal or equitable relief, take priority over the interest of any other person or entity.

Further, where the Claimant or its agent receives a recovery from any Source but does not reimburse the Plan, the Plan shall have the right to reduce future benefits on the claims submitted by the Participant and Eligible Dependents associated with the Claimant or reduce the amount of the dollar bank until the Plan has recovered the full amount allowed under this section 11.13.

(d) Action Required of Claimant. If requested in writing by the Trustees, the Claimant or the Claimant's authorized representative shall take such action as necessary or appropriate to recover any and all payments made or to be made by the Plan. If a Claimant fails or refuses to take such action, the Plan shall be entitled to do so in the Claimant's name against any Source liable therefor.

The Claimant shall hold in trust for the Plan's benefit that portion of the total recovery from any Source which is due for payments made or to be made by the Plan. The Claimant shall reimburse the Plan immediately upon recovery.

The Claimant must not do anything to impair, release, discharge or prejudice the Plan's rights to subrogation and/or reimbursement. The Claimant shall assist and cooperate with the representatives the Plan designates. The Claimant shall do everything necessary to enable the Plan to enforce its subrogation and reimbursement rights. The Trustees may also require that a Claimant execute a subrogation and reimbursement agreement, in a form acceptable to the Trustees, as a condition to receiving benefits for a Claim. Any claim relating to the Claim which is first received by the Plan after a recovery, regardless of when the claim is incurred, shall be the responsibility of the Claimant to the extent of the Claimant's net recovery and shall be paid by the Claimant and not the Plan. In the event the Plan inadvertently provides benefits for such a claim, the Claimant shall have an obligation to repay the Plan to the extent of the Claimant's net recovery. The Plan has the enforcement rights set forth in subsection (c) of this section 11.13 to recover such amounts.

(e) Attorneys' Fees. The Plan specifically disavows any claims the Claimant may make under the common fund doctrine. This means that the Plan shall not be responsible for any of the Claimant's attorneys' fees or costs incurred in seeking a recovery, whether by suit, settlement or otherwise, unless the Plan has agreed in writing to pay such fees or costs.

(f) Trustees' Right to Waive. The Trustees of the Plan may waive the above subrogation or reimbursement rights or any part thereof, if they decide such action is in the best interest of the Plan and its participants, unless determined to be acting in an arbitrary and capricious manner.